

**Representative Craig Hall** proposes the following substitute bill:

**GAMBLING AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to gambling.

**Highlighted Provisions:**

This bill:

- defines the term "fringe gaming device";
- modifies the definition of "gambling";
- provides an exception to gambling for an amusement device that involves skill and provides prizes, toys, or novelties with a certain value;
- modifies the offense of gambling to include the use of a fringe gaming device; and
- makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-10-1101**, as last amended by Laws of Utah 2012, Chapters 27 and 157

**76-10-1102**, as last amended by Laws of Utah 2012, Chapter 157



Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-10-1101** is amended to read:

**76-10-1101. Definitions.**

As used in this part:

(1) (a) "Fringe gambling" means any gambling, lottery, or video gaming device which is:

(i) given, conducted, or offered for use or sale by a business in exchange for anything of value; or

(ii) given away incident to the purchase of other goods or services.

(b) "Fringe gambling" does not ~~mean~~ include a promotional activity that is clearly ancillary to the primary activity of a business.

(c) Determination of whether a promotional activity is clearly ancillary under Subsection (1)(b) is by consideration of the totality of the circumstances, which may include one or more of these factors:

(i) the manner in which the business is marketed, advertised, or promoted;

(ii) whether and the degree to which the business provides instructions regarding the use or operation of the promotional activity, as compared to the use or operation of the goods or services sold by the business;

(iii) the availability and terms of any free play option to engage in the promotional activity;

(iv) whether any contest, sweepstakes, or other promotional entries provided to customers who purchase goods or services from the business provide any advantage in winning a prize over any advantage provided to participants in the promotional activity who do not purchase goods or services from the business;

(v) whether the goods or services promoted for purchase by the business are on terms that are commercially reasonable; and

(vi) whether any prize won by participation in the promotion may be parlayed into one or more additional opportunities to win an additional prize.

(2) (a) "Fringe gaming device" means a device that provides the user:

(i) a card, credit, or product in exchange for anything of value; and

(ii) along with the card, credit, or product, the opportunity to participate in a contest, game, gaming scheme, or sweepstakes with a potential monetary return or outcome based on an element of chance.

(b) "Fringe gaming device" does not include:

(i) a device used to assist with a raffle or auction relating to a fundraiser or charitable event;

(ii) a device used for a promotional activity that is clearly ancillary to the primary activity of a business as described in Subsection (1)(b) and (c); or

(iii) a device that provides the user a card, credit, or product in exchange for only the user's name or contact information.

~~[(2)]~~ (3) (a) "Gambling" means risking anything of value for a return or risking anything of value upon the outcome of a contest, game, gaming scheme, or gaming device when the return or outcome:

(i) is based upon an element of chance; ~~[and]~~

(ii) is not substantially affected by the skill, knowledge, or dexterity of an individual;  
and

~~[(ii)]~~ (iii) is in accord with an agreement or understanding that someone will receive [something] anything of value in the event of a certain outcome.

(b) "Gambling" includes a lottery and fringe gambling.

(c) "Gambling" does not include:

(i) a lawful business transaction; ~~[or]~~

(ii) playing an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value~~[-]; or~~

(iii) playing an amusement device involving skill, if the reward for playing the amusement device is merchandise contained within the amusement device and limited to prizes, toys, or novelties with a value of less than \$50.

~~[(3)]~~ (4) "Gambling bet" means money, checks, credit, or any other representation of value.

~~[(4)]~~ (5) "Gambling device or record" means anything specifically designed for use in gambling or used primarily for gambling.

~~[(5)]~~ (6) "Gambling proceeds" means anything of value used in gambling.

88           [(6)] (7) "Internet gambling" or "online gambling" means gambling or gaming by use  
89 of:

90           (a) the Internet; or

91           (b) any mobile electronic device that allows access to data and information.

92           [(7)] (8) "Lottery" means any scheme for the disposal or distribution of property by  
93 chance among persons who have paid or promised to pay any valuable consideration for the  
94 chance of obtaining property, or portion of it, or for any share or any interest in property, upon  
95 any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or  
96 chance, whether called a lottery, raffle, or gift enterprise, or by whatever name it is known.

97           [(8)] (9) "Video gaming device" means any device that possesses all of the following  
98 characteristics:

99           (a) a video display and computer mechanism for playing a game;

100           (b) the length of play of any single game is not substantially affected by the skill,  
101 knowledge, or dexterity of the player;

102           (c) a meter, tracking, or recording mechanism that records or tracks any money, tokens,  
103 games, or credits accumulated or remaining;

104           (d) a play option that permits a player to spend or risk varying amounts of money,  
105 tokens, or credits during a single game, in which the spending or risking of a greater amount of  
106 money, tokens, or credits:

107           (i) does not significantly extend the length of play time of any single game; and

108           (ii) provides for a chance of greater return of credits, games, or money; and

109           (e) an operating mechanism that, in order to function, requires inserting money, tokens,  
110 or other valuable consideration [~~in order to function~~] other than solely the user's name or  
111 contact information, or the time the user spends to input the user's name or contact information  
112 into the device.

113           Section 2. Section **76-10-1102** is amended to read:

114           **76-10-1102. Gambling.**

115           (1) A person is guilty of gambling if the person:

116           (a) participates in gambling, including any Internet or online gambling;

117           (b) knowingly permits any gambling to be played, conducted, or dealt upon or in any  
118 real or personal property owned, rented, or under the control of the actor, whether in whole or

119 in part; [~~or~~]

120 (c) knowingly allows the use of any video gaming device or fringe gaming device that  
121 is:

122 (i) in any business establishment or public place; and

123 (ii) accessible for use by any person within the establishment or public place[-]; or

124 (d) knowingly uses a fringe gaming device with intent to participate in gambling.

125 (2) Gambling is a class B misdemeanor, except that any person who is convicted two  
126 or more times under this section is guilty of a class A misdemeanor.

127 (3) (a) A person is guilty of a class A misdemeanor who intentionally provides or  
128 offers to provide any form of Internet or online gambling to any person in this state.

129 (b) Subsection (3)(a) does not apply to an Internet service provider or hosting company  
130 as defined in Section 76-10-1230, a provider of public telecommunications services as defined  
131 in Section 54-8b-2, or an Internet advertising service by reason of the fact that the Internet  
132 service provider, hosting company, Internet advertising service, or provider of public  
133 telecommunications services:

134 (i) transmits, routes, or provides connections for material without selecting the  
135 material; or

136 (ii) stores or delivers the material at the direction of a user.

137 (4) If any federal law is enacted that authorizes Internet gambling in the states and that  
138 federal law provides that individual states may opt out of Internet gambling, this state shall opt  
139 out of Internet gambling in the manner provided by federal law and within the time frame  
140 provided by that law.

141 (5) Whether or not any federal law is enacted that authorizes Internet gambling in the  
142 states, this section acts as this state's prohibition of any gambling, including Internet gambling,  
143 in this state.